

U.S. Pat. App. Ser. No. 10/542,672  
Attorney Docket No. 10191/3945  
Reply to Office Action of January 5, 2010

**REMARKS**

With the cancellation herein without prejudice of claims 20 and 33, claims 15 to 19, 21 to 32, and 34 are pending in the present application.

In view of the following, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Claims 15 to 34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over WIPO publication No. WO 00/78038 ("Szeliski") in view of U.S. Patent No. 5,812,286 ("Lin") in further view of U.S. Patent No. 6,061,091 ("Van de Poel").

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

The Szeliski reference concerns a system and method for manipulating a set of images of a static scene captured at different exposures (i.e., "bracketed" images) to yield a composite image with improved uniformity in exposure and tone (Szeliski, page 2, lines 4 to 5 and lines 14 to 17). The pixel set is made up of all the corresponding pixels from the bracketed images, where corresponding pixels are defined as pixels that represent the same

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portion of the depicted scene. (Szeliski, page 3, lines 13 to 16). This is supposedly done by analyzing a set of bracketed images using a multi-dimensional histogram and merging the images via an approach that projects pixels onto a curve that fits the data (400-406). The desired composite image can also be produced by summing the pixel brightness levels across the multiple images and followed by an equalization process (704), such as averaging the summed pixel brightness values by dividing the summed value of each pixel set (i.e., groups of corresponding pixels from the bracketed images) by the number of bracketed images. A better result can be achieved using a histogram equalization process (710-720). (Szeliski, Abstract). In particular, Szeliski refers to a histogram equalization process involving creation of a count of number of pixels sets having the same summed brightness level. From this count, a cumulative distribution function is computed and normalized to a maximum value corresponding to the maximum summed brightness level. (Szeliski, page 3, lines 20 to 24).

While the rejections may not be agreed with, to facilitate matters, claims 15, 22, and 28 have been rewritten to provide the feature in which the segments of linear functions are individually adjusted for adjusting the at least one pixel of the image sensor.

The Szeliski reference does not describe or suggest the feature in which “the segments of linear functions are individually adjusted for adjusting the at least one pixel of the image sensor”, as provided for in the context of each of claims 15, 22 and 28, as presented. Even if Szeliski did refer to a linear function, Szeliski does not disclose segments of linear functions that are individually adjusted for the purposes of adjusting the at least one pixel of the image sensor, as provided for in the context of the presently claimed subject matter.

The Lin reference concerns a method of hue shift correction based on the extrema values of each channel, and exposure correction based on the median value of each channel. The Lin reference does not disclose the feature in which in which the segments of linear functions are individually adjusted for adjusting the at least one pixel of the image sensor.

The Van de Poel reference concerns a method for gradation correction of digital images acquired by a digital camera from a scene, comprising small specular reflection zones. The Van de Poel reference does not disclose the feature in which in which the segments of linear functions are individually adjusted for adjusting the at least one pixel of the image sensor.

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Since the secondary Lin and Van de Poel references do not cure the critical deficiencies of the primary reference, claims 15, 22 and 28 are allowable, as are their respective dependent claims 16 to 19, 21, 23 to 27, 29 to 32, and 34.

As further regards all of the obviousness rejections, any Official Notice is respectfully traversed to the extent that it is maintained and it is requested that the Examiner provide specific evidence to establish those assertions and/or contentions that may be supported by the Official Notices under 37 C.F.R. § 1.104(d)(2) or otherwise. In particular, it is respectfully requested that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the § 103 rejections are apparently being based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions. (See also MPEP § 2144.03).

Accordingly, claims 15 to 19, 21 to 32, and 34 are allowable.

### **CONCLUSION**

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

Dated: 3/17/2010

By:

Gerard A. Messina  
(Reg. No. 35,952)

KENYON & KENYON LLP  
One Broadway  
New York, New York 10004  
(212) 425-7200

33,865  
Hana C  
D'Esposito)

**CUSTOMER NO. 26646**